

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. S2-4:09 CR 509 JCH
	)	
HOWARD A. WITTNER,	)	
	)	
Defendant.	)	

**MOTION FOR HEARING ON DEFAULT**

COMES NOW the United States of America, by and through Richard G. Callahan, United States Attorney for the Eastern District of Missouri, and Steven A. Muchnick, Charles S. Birmingham, and Richard E. Finneran, Assistant United States Attorneys for said District, and, pursuant to Title 18, U.S.C., Sections 3572(i) and 3613A, respectfully submits that defendant, Howard A. Wittner, is delinquent and in default on his restitution and requests a hearing regarding the effect of said default and in support states as follows:

1. On November 19, 2013, this Court entered its Amended Judgment in this case (Doc. #676) and ordered the defendant to pay restitution in the amount of \$10,500,000 and make “a lump sum payment of \$1,000,000 due within 30 days of sentencing.”
2. The Defendant failed to make the lump sum restitution payment as ordered and has been delinquent on his restitution payment for more than 90 days.
3. Accordingly, the defendant’s restitution is in default under Title 18, U.S.C., Section 3572(i) and subject to the provisions of Title 18, U.S.C., Section 3613A.
4. Pursuant to Title 18, U.S.C., Section 3613A, the United States now moves this Court to set a hearing and at such hearing, based upon a finding that the defendant is in default,

determine the effect of defendant's default and make any other appropriate determinations as required under Section 3613A.

5. In light of the provisions and considerations set forth in Section 3613A, and given the further authority vested with the Court under Title 18, U.S.C., Section 3614, the United States respectfully requests that the hearing under Section 3613A be set on or after August 10, 2015 to allow the parties sufficient time to prepare.

6. The United States further requests that the Court vacate, or otherwise continue, the conference set pursuant to defendant's "Motion For Conference or, Alternatively, For Evidentiary Hearing" (Doc. # 801) in that: i) the defendant seeks to improperly raise matters previously adjudicated at sentencing; and ii) any evidence regarding the defendant's "ability to comply with the provisions of the restitution Order" may be properly presented at a hearing pursuant to Section 3613A.

WHEREFORE, based upon defendant's delinquency and default, the United States respectfully requests: that this Court set the matter for hearing pursuant to Title 18, U.S.C., Section 3613A; that said hearing be set on or after August 10, 2015; and that the conference set for July 14, 2015 be vacated or otherwise continued.

Respectfully submitted,

RICHARD G. CALLAHAN  
United States Attorney

/s/ Charles S. Birmingham  
STEVEN A. MUCHNICK, #27597MO  
CHARLES S. BIRMINGHAM, #47134MO  
RICHARD E. FINNERAN, #60768MO  
Assistant United States Attorney  
111 South 10th Street, Room 20.333  
St. Louis, Missouri 63102  
(314) 539-2200

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2015, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Charles S. Birmingham  
CHARLES S. BIRMINGHAM, #47134MO  
Assistant United States Attorney